IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12019 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHARMESHBHAI VIJAYBHAI KAHAR

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

1. Special Civil Application No. 12019 of 2004

MR JAYESH A DAVE for Petitioner No.1

MRS HB PUNANI AGP for Respondent No.3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/01/2005

ORAL JUDGEMENT

1. By way of filing this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged his order of detention passed

by the Police Commissioner, Surat City on 13.07.2004 in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ["PASA Act" for short]. The petitioner is in detention as bootlegger from 14.07.2004, in pursuance of the above said order.

2. The grounds as placed on record of detention served upon the petitioner reveal that the detaining authority relied upon the crimes registered against the petitioner on 31.03.2004 and 11.06.2004 under the Bombay Prohibition Act whereby some quantity of prohibited liquor was found in possession of the petitioner. On going through the investigating papers thoroughly, the detaining authority came to the conclusion that the petitioner was involved in the activity of storing, selling and transporting illegal liquor causing disturbance to the public order and public health. The detaining authority came to the conclusion that the petitioner was bootlegger within the meaning of PASA Act and the anti social illegal activity of the petitioner was required to be prevented forthwith. The detaining authority also considered other remedies available in general law, but came to the conclusion that the steps under general law likely to take time and the activity of the petitioner was required to be prevented forthwith and, therefore, the detaining authority passed an order of detention against the petitioner, which is under challenge in this petition.

3. Learned advocate Mr.Jayesh Dave for the petitioner and learned AGP Mrs.H.B.Punani were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by the learned AGP is also taken into consideration.

4. Out of various grounds advanced against the order of detention by the learned advocate for the petitioner and controverted and opposed by the learned AGP, it appears that the petition can be disposed of, examining the ground that whether the detaining authority was supplied with sufficient material to reach to a subjective satisfaction that the activity of the petitioner was prejudicial to the maintenance of public order.

5. Undoubtedly, the detaining authority relied upon the investigation in the crimes registered against the petitioner under the Bombay Prohibition Act, no other material whatsoever was available with the detaining authority to come to the conclusion that the activity of

the petitioner was prejudicial to the maintenance of public order and was adversely affecting the public health. It is established law that to come to the conclusion that the activity of the detenu was prejudicial to the maintenance of public order as well as affecting the public health adversely, the detaining authority must rely on some credible material. A line has been drawn between the "breach of law and order" and "maintenance of public order". The public order is disturbed, when the activity of the detenu is causing harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or wide spread danger to the life, property or public health. In the present case, whatever material available with the detaining authority was in shape of investigation papers of the crimes registered against the petitioner. The offences registered against the petitioner of the ground that he was dealing in liquor have no bearing on the question of maintenance of public order, especially in the absence of any material indicating that those activities of the petitioner have adversely affected the maintenance of public order. The registration of crimes against the petitioner may be breach of law and for that the petitioner may be punished but surely the acts constituting the offences cannot be said to have affected even the tempo of life of the community. Therefore, in total absence of material before the detaining authority, the subjective satisfaction arrived at by him as to disturbance of public order by the activities of the petitioner is not legal, valid and in accordance with law. The order under challenge is required to be quashed and set aside on this ground alone.

6. In the result, in view of the above discussion, this Special Civil Application is allowed. The order of detention passed against the petitioner by the Police Commissioner, Surat City on 13.07.2004 in exercise of powers conferred upon him by Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner Dharmeshbhai Vijaybhai Kahar is ordered to be set at liberty forthwith, if he is not required to be detained in Jail, for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

(vijay)